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July 1, 2022

Via CM/ECF

Hon. Ann M. Donnelly
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Susser v. New York City Department of Education, et al.*
Case No. 1:22-cv-00051-AMD-VMS

Your Honor,

This firm represents the Plaintiff in the above-referenced matter (the “Action”). We write pursuant to Section 4.A of Your Honor’s Individual Rules and in response to Defense Counsel’s June 24, 2022, letter, we request a pre-motion conference concerning Defendants’ proposed motion to dismiss.

I. Background

Plaintiff Courtney Susser (“Plaintiff”) filed the present Action after the Defendants abruptly dismissed her from the Curtis High School Adult Practical Nursing Program after an incident that occurred on April 17, 2021, while Plaintiff was working as a student at the Carmel Nursing Home. A nurse who was employed at Carmel Nursing Home was offended by a comment she overheard Plaintiff mumble to herself and reported this comment to Plaintiff’s teacher. Plaintiff’s teacher then publicly confronted her about the overheard comment, which led to a heated discussion between Plaintiff and the teacher. After this encounter, Plaintiff received a letter informing her of her dismissal from the Program. Prior to receiving the letter of dismissal Plaintiff was not afforded any notice or due process and was therefore left unable to defend against the allegations which may have formed the basis

for her dismissal. For these reasons Plaintiff has sued Defendants for violation of her federally protected right to due process of law, breach of contract, and negligence.

Plaintiff respectfully asks this Court to deny Defendant's request and/or allow for an Amended Complaint to be filed, based upon the following:

II. Response to Defendants' Basis for a Motion to Dismiss

a. Plaintiff's Due Process Claims are Adequately Pled

Concerning Plaintiff's Due Process claims; the Defendant brings forward that the Courts are an inadequate venue for Plaintiff's claims. Stating instead that Plaintiff should bring the pending claims in an Article 78 proceeding. This is inaccurate. Educational claims have long been litigated under §1983 in the Federal forum. The case law precedent that is laid out in the

An adequate-deprivation remedy does not exist. Plaintiff has been deprived of her due process rights. This forum is the only adequate forum to bring justice to the wrong perpetrated against the Plaintiff by Defendants.

b. Plaintiff's Claims are within the Statute of Limitations

Plaintiff's claims were brought within the Statue of Limitations. Defendants erroneous attempt at placing Plaintiff' claims under Article 78 a proceeding to state they are time barred is unjust.

Plaintiff was dismissed from the nursing program in 2021 without adequate due process. Plaintiff filed the subject lawsuit in 2022, well within the statute of limitations for a §1983 claim, as pled.

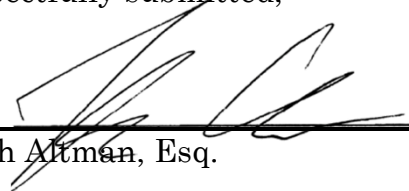
c. Municipal Liability is Adequately Pled

Plaintiff lays out facts in her Complaint of unconstitutional activity perpetrated by Defendant's that occurred in multiple situations over a period of time. Plaintiff does not allege a single minuscule event. The unconstitutional activity perpetrated by multiple individuals, over a duration of time to rid Plaintiff of her rights provides for a well pled claim. Plaintiff paid for an education at Defendant's institution. The contract entered into between Plaintiff and Defendant stated that Plaintiff would pay Defendant the cost of tuition and Defendant would provide Plaintiff with the education afforded to her in the contact. This is further supported by Defendants handbook and policies. Plaintiff was deprived of her property right in her education without due process of law.

Plaintiff respectfully requests that Defendant's Motion to Leave to file a Motion to Dismiss be denied as Plaintiff has filed a well pled Complaint. Plaintiff's complaint provides adequate notice of claims and questions of fact to be tried by a jury. The above referenced claim should proceed to discovery. Should Defendants be allowed to proceed with their Motion to Dismiss, Plaintiff respectfully requests to be provided 30 days to file a response in opposition or file an amended complaint under Fed. R. Civ. P. 15(c).

We thank the Court for its consideration of the above.

Respectfully submitted,



Keith Altman, Esq.